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Steam Engines,

Boilers, Sugar Mills, Coolers, Brans
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to order. Particular attention paid to
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on the shortest notice.

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MRS. PRAY WOULD ANNOUNCE
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—AND—

Agent to take Acknowledgments.

OFFICE—No. 13 Kaahumanu Street, Hono-
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Merchants.

225 Queen Street, Honolulu, H. I.

H. MAY & CO.,

Wholesale and Retail Grocers

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Telephones 22. P. O. Box 470.

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HARDWARE,

Cutlery and Glassware

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FORT STREET, OPPOSITE WILDER & CO.'S

H. J. NOLTE, Proprietor.

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Importers and Dealers in Lumber
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T. E. LINDSAY,

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Gold and Silverware,

Diamonds, Etc.

Just the things suitable for the holidays.

208 MERCHANT ST.,

Between Fort and Kaahumanu streets.

3861-3m

BOWLER'S WRITTEN STATEMENT

He Is an Injured Man According
To Its Wording.

V. V. ASHFORD OBJECTS TO COURT.

He Does Not Want Captain's Ziegler or
Pratt to Pass Judgment on Him—
Neumann Says the Court Cannot Try
Bowler—Captain Kinney's Answer.

The principal part of the sessions of
the Military Commission yesterday
were devoted to Mr. Neumann's en-
deavors to argue the Commission out
of existence and Captain Kinney's
equally strong support of that body.

The Court opened promptly at 10 a.
m. After the reading of the minutes
Mr. Neumann stated he had no evi-
dence to submit beyond a statement
made by Mr. Bowler. Attention was
then turned to the objections to the
jurisdiction made by the defense,
which are as follows:

John F. Bowler being arraigned upon
a charge of misprision of treason,
makes the following objection to the
jurisdiction of this Court.

First.—That there is no actual state
of war in the country.

Second.—That the proclamation of



V. V. ASHFORD.

martial law does not authorize the
trial of any person by a Military Com-
mission, or a Court Martial, unless he
is a member of the Military or Navy
of this country or, if actual war exists,
that he has committed an offense
against the laws of war.

Third.—The crime of which the pris-
oner is accused is Misprision of Treas-
on, a statutory crime which, by its
definition under the law, is not an of-
fense against the laws of war.

Fourth.—That under the Constitu-
tion and laws of the Republic of Ha-
waii the prisoner is entitled to a trial
by jury upon information, indictment
and complaint, except in cases of im-
peachment.

Mr. Neumann called attention to
Section 1, of the Constitution, which
says, "God has endowed all men with
certain inalienable rights, among
which are life and liberty." The right
of trial by jury should be maintained
inviolable; neither the proclamation of
martial law or the suspension of the
writ of habeas corpus had suspended
the rights of the Constitution. Have
you the right in times of peace to sit
on cases coming under the penal code?
The counsel maintained that there was
no necessity for the proclamation of
martial law; it only placed the police
power of the State in the hands of the
military. The Military Commission
could only derive its power from the
law of nations; there was nothing in
the Constitution giving it authority.
The law of war cannot lay down what
you will do, but it does tell you what
you must not do. Every offense against
the law of war comes under your di-
rection, but as long as the crime is not
against the law of war you have no
more right to try the accused of mis-
prision than to try him for bigamy.
Misprision is not an offense against
the safety of the soldiers or the com-
mander in chief. The case of Jeffers-
on Davis, who was a prisoner of war
during the crisis of the rebellion, was
cited and attention called to the fact
that but one Military Commission
had been given power to act in the
United States, that action being upon
the assassins of President Lincoln.
Before you have a right to sit in trial
on these people you must show that
that right exists by law, book or
precedent.

Captain Kinney said when it came
to a question whether the action of
the Court is just, lawful and right,
that body must be governed by what
civilized men of whatever nation
would do under the same circum-
stances; we must satisfy our own con-
sciences and that is enough. Are we
working properly and not taking ad-
vantage of circumstances. At this
hour we know not where we stand; we
do not know who may be co-conspir-
ators or when and how the rebellion
started. Should the accused be tried
by jury we do not know what men
might sit on the jury who if the truth
were sworn should be in the prison-
er's dock.

The very law by which the assassins
of President Lincoln were tried and
hung was made by act of Congress

and was not the result of the action of
one man. Our constitution gives the
right to suspend the writ of habeas
corpus, and it is not for us to say
whether or not that right has been
properly exercised. Considering the
population of the islands would it not
have been criminal neglect and in-
sanity for those who made the consti-
tution not to have allowed that
power. Martial law legally exists
and furthermore it would have been
criminally unjust had this power
been left out or neglected. All the
courts of the nation are tributary to
the Military Commission. The fact
that the counsel has admitted that
guards and vigilance on the part of
the authorities is necessary today is
confession that an unusual state of
affairs exists. It is impossible to try
these men before the civil courts
while martial law exists.

The noon hour having passed Cap-
tain Kinney gave notice that he
would close his argument at the after-
noon session. A recess was declared
until 1:30 p. m.

AFTERNOON SESSION.

Judge-Advocate Kinney continued
his argument. He said in part: Mar-
tial law is used at different times in
different senses, each differing from
the others as follows:

First—"The law martial exercised
by the constable and marshal over
troops in active service."

Second—"The same system in time
of peace or emergency and especially
for punishment for breaches of the
peace."

Third—"For the government of
standing armies under the Military
Act and the Army Discipline Act."

Fourth—"The common law right of
the crown and its representatives to
repel force by force in case of rebellion
or insurrection and to act against reb-
els as it might against invaders."

It is obvious that trials of a case
like this do not come under the first,
third or fourth definitions of martial
law. They come more correctly un-
der the second definition. Now it
may be true, it is true, that this sec-
ond exercise of martial law is declared
by courts to be illegal by the petition
of right, which expressly declares that
trials in such cases cannot be had.
There is in the Hawaiian Constitu-
tion no such constitutional prohibi-
tion. But in cases of necessity martial
law has been declared in several
British colonies, as at the Cape of
Good Hope, in Ceylon, in Jamaica and
in Demarara. The view of the Eng-
lish law is that necessity alone is the
justification of martial law; and, that
martial law is rather a status which
exists, whether with or without any
proclamation of it, and that it does
not depend for its validity or legality
upon any enactment of the law-mak-
ing power.

The United States Constitution also
contains no express power authorizing
the President or even Congress to de-
clare martial law. The declaration of
martial law by the President of the
United States was under what were
called the war powers of the Constitu-
tion, and being a war power it would
of necessity extend no further than
the actual existence and the neces-
sities of a condition of war required.

All this is entirely different from
the constitutional powers of the Pres-
ident of Hawaii. He may not only
suspend the writ of habeas corpus; he
may not only declare martial law; he
may place the whole or any part of
the Republic under martial law, not
only in case of rebellion or insurrec-
tion, but when there is imminent dan-
ger of rebellion or insurrection and
the public safety requires. He may
not only use the military force to
suppress an insurrection and during
its actual continuance; he may use
military force and martial law for the
prevention of an insurrec-
tion, that is to say, while there is
no imminent danger of it, and if he
may govern the country under such
circumstances by martial law for any
purpose, he may do so for all pur-
poses. Counsel for the prisoners has
confined his argument to the meaning
of martial law in one only of its dif-
ferent aspects, and sought to have it
restricted and limited in Hawaii by
English constitutional requirements
not existing here. As stated in Hal-
lock's Int. Law, Chap. 32, Sec. 20,
"Martial law extends to a great variety
of cases not relating to the disci-
pline of the army, such as plots
against the sovereign and intelligence
to the enemy."

The Hawaiian law, unlike English
and American law, authorizes the
establishment and continuance of
martial law in time of peace as well
as war. It may be also that the
prisoner has, by his crime, made him-
self liable before the civil courts of the
country if they were now performing
their functions in cases of this nature.
There is no inconsistency in the same
conduct being punishable as well by
municipal as by martial law, or in the
same act, being criminal, as well by
municipal as by martial law. Today
each and every provision of the Con-
stitution of Hawaii which conflicts
with martial law is superseded by the
martial law, which is supreme today.
The mere suspension of the writ of
habeas corpus might, perhaps, imply
that the civil processes would subse-
quently apply in any case not strictly
a war case; but the Hawaiian Consti-
tution goes further than to suspend
the writ of habeas corpus and makes
martial law, and nothing but martial
law, now supreme upon the island of
Oahu today.

Mr. Kinney closed by stating that it
was due only to a rule of law that
Bowler was not charged with treason;
he knew about the landing of arms;
he was one of the men who were to
seize the telephone office. He was as
guilty of levying war as those who
took the field. "Public tranquility

will not return until this Commission
brought the guilty to judgment,"
concluded the Judge-Advocate.

Paul Neumann answered, and con-
tended that the court had no jurisdiction
under the law of the land; it could
not try anyone for an offense unless
committed since the proclamation of
martial law. Bowler's offense, if any,
precedes the proclamation, and there-
fore could not be tried by this court.

The court retired for deliberation.
On its return, Colonel Whiting an-
nounced that the objections of the
defendant were overruled.

A written statement from Bowler
was then read. It was as follows:
"J. F. Bowler states that there is no
truth in the statement that he either
knew the time or fact of that revolt
would take place, and that in no con-
versation with Mr. Neumann was he
informed of the arrival or landing of
arms, or the enlistment of men for the
purpose of restoring a monarchical
government, or to overthrow the
Republic. That, like many others,
he has heard rumors and read about
them in newspapers, but paid as little
attention and gave as little weight to
them as to other things which he
heard not relating to the politics of
this country."

V. V. Ashford's case was then taken
up. Paul Neumann objected to the
trial going on, on the ground that the
accused was not served with a copy of
the charge made against him within
five days after his arrest.

Judge-Advocate Kinney replied that
in a case of the kind before the Court
it was not necessary to comply with
that formality.

It was learned later that a copy of
the charge and specifications was
served on last Saturday evening.

The Court announced that the ob-
jection would be considered.

When asked if the defendant had
any objection to the Court, Paul Neu-
mann arose and said that they ob-
jected to Captain Pratt.

The Captain said that as an ob-
jection had been made against him, he
hoped the Court would sustain the
objection. He was excused.

Mr. Neumann objected to Captain
Ziegler also, saying that in behalf of
his client he would state that Captain
Ziegler's character was not in ques-
tion, the objection being made solely
on account of the strained relations
that have existed between the two
men for some time.

Captain Ziegler asked to be excused.
Granted.

The Court then consisted of Colonel
Whiting, Captains Camara and Wilder
and Lieutenant Jones.

Paul Neumann was satisfied to have
the trial go on with the gentlemen
named.

The Court adjourned till 10 o'clock
this morning.

ALL KINDS OF NEWS.

Some Important Advice to Residents
of this City.

No other publication is in it for a
moment with the HAWAIIAN GA-
ZETTE. It is popular with every-
one and each mail carries away a
large number. Extra editions have
been demanded for some time, and
no matter how many copies are
struck off, they do not remain at
this office much longer than it
would take a thirsty native to dis-
pose of a large bottle of saki.

The number issued yesterday is
a particularly good one, containing,
as it does, all the news for the past
few days. The report of the cases now
on trial before the Military Court,
cannot be duplicated, and will be
read with intense interest by your
friends abroad. If you wish to keep
your correspondents posted on Ha-
waiian affairs you must send them
the GAZETTE. For sale at this office
or at the newsdealers.

To Leave This Afternoon.

The following persons are booked
to leave for San Francisco in the
Australia: Fred. Dutton, E. Caw-
son and wife, Peter Dean, J. A.
Horbach, Miss Dean, Judge W. F.
Frear, A. Young, Jr., wife and
child, Mrs. B. Friemann, Mrs. F.
Boardman, Dr. Penny, Mrs. E. R.
Hendry and son, J. W. Sprague,
Miss Widdifield, M. Green, George
C. Brown, Mrs. George P. Castle,
Mrs. James B. Castle, W. H. Gur-
ney, R. Oxnard, Mrs. Edgerton,
Mrs. Wetherbee, F. S. Winston
and wife, Mrs. J. A. Lowell and
child, C. W. O'Neil, and Captain
Schmidt.